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MAY 18 2015

AT BALTIMORE
 CLERK U.S. DISTRICT COURT
 DISTRICT OF MARYLAND

DEPUTY

UNITED STATES OF AMERICA

v.

DANTE FAULKNER

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Criminal No. JFM-04-004
Civil No. – JFM-14-1278

MEMORANDUM

Dante Faulkner has filed this motion under 28 U.S.C. §2255. The motion will be denied.

Faulkner entered into a “C” plea under which he agreed that a sentence of 420-480 months was appropriate. This court sentenced him to a period of incarceration of 436 months (316 months on Count One and 120 months consecutive as to Count Twenty).

The judgment and commitment order was entered on April 7, 2005. Faulkner did not file an appeal. Thus, as an initial matter, the present petition is clearly barred by the one year limitation period established by 28 U.S.C. §2255. Faulkner seeks to avoid this limitations period by arguing that the Supreme Court’s ruling in *Peugh v. United States*, 133 S. Ct. 2072 (2013) applies to his case. It does not. There is no change in the applicable Sentencing Guidelines for Count One between the time of Faulkner’s offense conduct and the time his rearraignment and sentencing. Therefore, no *ex post facto* is presented.

Likewise, no violation of the doctrine established by *Apprendi v. New Jersey*, 530 U.S. 466 (2000) or *Alleyne v. United States*, 133 S. Ct. 2151 (2013) occurred. The quantities of drugs attributable to Faulkner were set forth in Count One. Moreover, under Fourth Circuit law

Apprendi and *Alleyne*, have no retroactive application. See *United States v. Sanders*, 247 F.3d 139, 146 (4th Cir. 2001); *United States v. Stewart*, 540 Fed.Appx. 171, n.1 (4th Cir. 2013).

A separate order denying Faulkner's motion is being entered herewith.

Date: May 18, 2015

J. Frederick Motz
J. Frederick Motz
United States District Judge

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